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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 SCOT RANDOLPH BARTLETT,
11 Plaintiff,
12 vs.
13 W. BURCHINAL, et al.,
14 Defendants.
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Case No. 2:05-CV-00449-KJD (GWF)

ORDER, FINDINGS AND
RECOMMENDATION

16 This matter is before the Court on Plaintiff's Motion for Partial Summary Judgment (#23),
17 filed on June 1, 2006 and Defendant's Opposition to Plaintiff's Motion for Partial Summary
18 Judgment (#17), filed on June 9, 2006.

19 **BACKGROUND**

20 This is a civil rights action in which the Plaintiff alleges that he was subjected to discipline
21 by the Defendant jail authorities without due process of law while Plaintiff was incarcerated as a
22 pre-trial detainee in the Clark County Detention Center. In particular, Plaintiff alleges that his "free
23 time" privileges were taken away when one of the Defendant officers confronted him and another
24 inmate and demanded to know which of them had a bar of soap connected to a string, commonly
25 known in the jail as a "cadillac." Possession of such an item is allegedly prohibited under jail rules.
26 Because neither inmate acknowledged possession of the "cadillac," the officer revoked both
27 Plaintiff's and the other inmate's "free time" privileges. Plaintiff's Motion for Partial Summary
28 Judgment (#23) requests summary judgment on the issue of liability on the grounds that he was

1 denied due process of law. In its Opposition (#17), the Defendants state that Plaintiff's Motion for
2 Partial Summary Judgment is premature because no discovery scheduling order has been entered in
3 this action. Unfortunately, this appears to be the case. Accordingly,

4 **IT IS HEREBY ORDERED** that the following scheduling order is hereby entered in this
5 case.

6 1. Any and all pleadings that may be brought under Fed. R. Civ. P. 13 & 14, or joining
7 additional parties under Fed. R. Civ. P. 19 & 20, shall be filed within **sixty (60) days** from the date
8 of this Order. Any party causing additional parties to be joined or brought into this action shall
9 contemporaneously therewith cause a copy of this Order to be served upon the new party or parties.

10 2. Any discovery motions shall be filed and served no later than **eighty (80) days** from
11 the date of this Order.

12 3. Motions for summary judgment shall comply with the requirements of LR 56-1 and
13 shall be filed and served no later than **thirty (30) days after the close of discovery**.

14 4. Any motion filed beyond the time limit fixed by this Scheduling Order shall be
15 stricken, unless the Court grants an exception for good cause shown.

16 5. **DISCOVERY:** Pursuant to LR 16-1(b), discovery in this action shall be completed
17 on or before **ninety (90) days** from the date of this Order.

18 6. **EXTENSIONS OF DISCOVERY:** Pursuant to LR 26-4, an extension of the
19 discovery deadline will not be allowed without a showing of good cause. All motions or
20 stipulations to extend discovery shall be received by the Court at least **twenty (20) days** prior to the
21 date fixed for completion of discovery by this Scheduling Order, or at least **twenty (20) days** prior
22 to this expiration of any extension thereof that may have been approved by the Court. The motion
23 or stipulation shall include:

24 (a) A statement specifying the discovery completed by the parties of the date of the
25 motion or stipulation;

26 (b) A specific description of the discovery which remains to be completed;

27 (c) The reasons why such remaining discovery was not completed within the time limit
28 of the existing discovery deadline; and

1 (d) A proposed schedule for the completion of all remaining discovery.

2 7. In the event that the Federal Rules of Civil Procedure provide for any shorter time
3 periods for the filing of motions or pleadings, said shorter time limits shall apply notwithstanding
4 the time limits set forth in this Scheduling Order. Pursuant to the authority given to the Court in
5 Fed. R. Civ. P. 16(b), motions for summary judgment under Fed. R. Civ. P. 56 must be filed no later
6 than the time provided in paragraph 4 of this Order.

7 8. **PRETRIAL:** Pursuant to LR 16-3(a), the Clerk shall issue a Pretrial Notice Order
8 five (5) days past the date for filing motions for summary judgment or all motions for summary
9 judgment are denied, whichever is later.

10 9. Any party who desires an amendment to this Scheduling Order shall, within **sixty**
11 **(60) days** hereof, file and serve a statement of proposed amendments and the reasons therefor. Each
12 other party shall have **fifteen (15) days** within which to file and serve a response thereto. After
13 expiration of the 60-day period, any amendment of this Scheduling Order shall be granted only upon
14 motion and good cause shown.

15 10. In all cases where a party or counsel is required to effect service hereunder, a
16 certificate of such service shall be filed forthwith with the Clerk of the Court.

17 **RECOMMENDATION**

18 **IT IS RECOMMENDED** that Plaintiff's Motion for Partial Summary Judgment (#23) be
19 **denied**, without prejudice to Plaintiff's right to renew it upon completion of the discovery period in
20 this case.

21 **NOTICE**

22 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
23 in writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held
24 that the courts of appeal may determine that an appeal has been waived due to the failure to file
25 objections within the specified time. *Thomas v. Arn*, 474 U.S 140, 142 (1985). This circuit has also
26 held that (1) failure to file objections within the specified time and (2) failure to properly address
27 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
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1 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
2 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

3 DATED this 6th day of March, 2007.

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6 GEORGE FOLEY, JR.
7 U.S. MAGISTRATE JUDGE
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